

*This is a transcript of a performance originally given October 13, 2019 at La MaMa Experimental Theatre Club in New York City. The performance closed an event called HISTORY/OURSTORY: 400 Years of Inequality and Protest, directed and curated by James E. Reynolds, with additional curation by Kyle Dacuyan and Nicky Paraiso. The event featured readings of historical texts from 1493 to the present day, and performances responding to some of those readings.*

*Jerome Ellis*

*Someone reads aloud the following transcript from the August 20, 2019 press conference where NYPD Commissioner James O'Neill made the following announcement:*

Good afternoon, everyone.

Today, I'm here to announce my decision in the disciplinary case of Police Officer Daniel Pantaleo, who is accused of violating NYPD policy while helping effect the lawful arrest of Eric Garner in Staten Island on July 17, 2014.

For some time prior to July 17, 2014, neighborhood residents purposely avoided the area in and directly around Tompkinsville Park in Staten Island. The conditions at that time arose from an array of criminal activity: Drug dealers worked the edges of the park, and across the street, selling narcotics. A handful of men regularly sold loose cigarettes made cheaper by the fact that New York State taxes had not been paid on them. A liquor store nearby sold alcohol to people who would drink that alcohol in the park – people who would sometimes use drugs, urinate, and pass out on benches there. That summer, the week before, there had been reports of theft and two robberies in the park. There were 911, 311, and other complaints from residents and merchants on an ongoing basis. In some cases, warnings or summonses were issued. In other cases, arrests were made.

And that was the situation at Tompkinsville Park on the day Officer Pantaleo was sent with another officer to conduct an enforcement operation. When the second officer observed Mr. Garner hand out cigarettes in exchange for money, they approached Mr. Garner to make an arrest. That offense could have resulted in a summons, but Mr. Garner refused to provide identification, which meant he would have to be brought to the precinct for processing.

For several minutes on the widely-viewed video, Mr. Garner makes it abundantly clear that he will not go willingly with the police officers. He refused to cooperate with the arrest and to comply with lawful orders. The video also makes clear that Officer Pantaleo's original efforts to take Mr. Garner into custody were appropriate....

Officer Pantaleo first grabbed Mr. Garner's right wrist and attempted an arm-bar technique in preparation for handcuffs to be used. Mr. Garner immediately twisted, and pulled and raised

both of his hands while repeatedly telling the officers to not touch him. Officer Pantaleo then wrapped his arms around Mr. Garner's upper body.

Up to that point in the tense and rapidly-evolving situation, there was nothing to suggest that Officer Pantaleo attempted to place Mr. Garner in a chokehold. But what happened next is the matter we must address. The two men stumbled backward toward the large plate-glass window of the storefront behind them, and Officer Pantaleo's back made contact with the glass, causing the window to visibly buckle and warp...

It is at that point in the video, that Officer Pantaleo is seen with his hands clasped together, and his left forearm pressed against Mr. Garner's neck in what does constitute a chokehold.

The NYPD court ruled that while certainly not preferable, that hold was acceptable during that brief moment in time because the risk of falling through the window was so high. But that exigent circumstance no longer existed, the court found, when Officer Pantaleo and Mr. Garner moved to the ground.

As Mr. Garner balanced himself on the sidewalk on his hands and knees, Deputy Commissioner of Trials Rosemarie Maldonado found that Officer Pantaleo "consciously disregarded the substantial and unjustifiable risks of a maneuver explicitly prohibited by the department." She found that during the struggle, Officer Pantaleo "had the opportunity to readjust his grip from a prohibited chokehold to a less-lethal alternative," but did not make use of that opportunity. Instead, even once Mr. Garner was moved to his side on the ground "with his left arm behind his back and his right hand still open and extended, [Officer Pantaleo] kept his hands clasped and maintains the chokehold. Mr. Garner's obvious distress is confirmed when he coughs and grimaces."

Moreover, Trials Commissioner Maldonado found that Officer Pantaleo's conduct caused physical injury that meets the Penal Law threshold, and that his "recklessness caused multi-layered internal bruising and hemorrhaging that impaired Mr. Garner's physical condition and caused substantial pain and was a significant factor in triggering an asthma attack."

For all of these reasons taken together... Trials Commissioner Maldonado recommended that he be dismissed from the NYPD. "In making this penalty recommendation," she wrote, "this tribunal recognizes that from the outset Mr. Garner was non-compliant and argumentative, and further notes that the Patrol Guide allows officers to use 'reasonable force' when necessary to take an uncooperative individual into custody. What the Patrol Guide did not allow, however, even when this individual was resisting arrest, was the use of a prohibited chokehold."

After noting that Officer Pantaleo had admitted he was aware that chokeholds are prohibited by this department, she further concluded: "With strongly-worded and repeated warnings about the potentially lethal effects of chokeholds found throughout multiple sections of the training

materials, it is evident that the department made its 2006 recruits keenly aware of the inherent dangers associated with the application of pressure to the neck. Given this training, a New York City police officer could reasonably be expected to be aware of the potentially lethal effects connected with the use of a prohibited chokehold, and be vigilant in eschewing its use.

*A negro walks on stage carrying the neck and body of a saxophone, as well as a stand for the saxophone. He kneels before the stand, assembles the saxophone, and places it on the stand. Around his neck is a strap for holding up the saxophone.*

*He kicks the ground once.*

One of the assumptions underlying O'Neill's speech is the assumption that both Garner and Pantaleo have equal human value and agency under the law. He says that Pantaleo's chokehold was "acceptable during that brief moment in time because the risk of falling through the window was so high." Presumably he's speaking of self-defense. But this calls into question what *self* is here. Garner was black. Pantaleo is white. In O'Neill's mind, and the NYPD's mind, maybe they're both equal under the law, both have equal access to self-defense. "The two men." But are they equal in their access to self-defense? What if it were reversed: Garner pressed against the glass? And what of the double power imbalance here? Not only white-black, but police-nonpolice. O'Neill says *Officer Pantaleo, Mr. Garner.*

Self.

During that brief moment in time.

Black feminist scholar Saidiya Hartman talks about how under slavery, a slave only possessed legal status in the event that the slave committed a crime. That is, the baseline status of the slave was not a legal person. They were socially dead. And the only way a slave could be recognized as a person was when the slave had committed a crime. Crime, of course, being defined by law, which was defined by whites. The situation was not as simple as: the slave was socially dead, legally no different from livestock.

Hartman goes on to argue that this situation had a direct influence on the violence that was inflicted on the slaves. The baseline condition of a slave was of course one of extreme violence, manifested in a potentially infinite number of methods. Which I will not catalog here. But if a slave committed a crime, that violence was often brought to an even higher degree of brutality and inhumanity. And because criminality was inextricably bound to being recognized as a person, personhood became inextricably bound to increased exposure to violence.

*He picks up his saxophone and straps it around his neck. He breathes through the saxophone for a few seconds.*

Hartman says, "Criminality is the only form of slave agency recognized by law."

And in O’Neill’s report, criminality is the lens he uses from the first sentence. Tompkinsville Park is nothing but a place where crimes happen, according to him, and Eric Garner thus becomes one more instance of what happens in Tompkinsville Park. He is reduced to someone selling cigarettes and thus subject to “lawful arrest.” Because police are tasked with the enforcement of the law and the punishment and recognition of criminality, what role do the police play in the legal selfhood of blacks?

A black man is standing before us holding a saxophone. He begins to play. What is happening? One answer is that he is reclaiming breath. The breath that, as Equiano described, in the slave hold, was stolen from the captives, the air that was stolen from Garner. Black breath passing through the horn to fight the ever-present black asphyxia. So he plays with abandon, fire, speed, John Coltrane, Pharaoh Sanders, Charlie Parker, anger, virtuosity, grace, joy. “Our only export is joy.” He even plays with a sense of freedom.

When Billie Holiday sings “Strange Fruit,” what is her relationship to the breath she has to use, and the breath that was stolen from those who were lynched?

But there was a form of theater at slave auctions that was called the coffle. Slaves waiting to be sold were fed lavishly, greased up, chained together, and paraded in front of whites—some of whom were there to buy, some of whom had just come for the entertainment. And as they marched chained they were forced, under penalty of the whip, to dance and sing and look cheerful. And then once they had been sold, on many plantations it was common for masters to force their slaves to play music and sing and dance for him and his family. They were forced to make music.

Does a trace of *this* form of violence, does a residue of it, cling to me whenever I blow my horn?

*He breathes through the saxophone.*

I can breathe through it, as you can hear.

*He breathes through it some more.*

But you don’t hear any pitch. In order to make a sound, I have to breathe in a different way, through it. “Sound before sight.”

I grew up in Virginia Beach, VA. I learned to play the saxophone there. On the Chesapeake Bay, where Point Comfort is, where in 1619 the ship arrived. My dad passes it every day on his way to work. I was never taught what Point Comfort is, as you will not be surprised to hear. I learned about it this year. I learned to drive on the highway that passes it.

*A long pause.*

Yes, Massa. What song would you like to hear?

Oh, I like that one too.

I'll play it just the way you like it.

*He picks up the stand and exits the stage.*